

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(Oakland)

FRANK W. RUPP and DOUGLAS J. GOULD,)	CASE NO. CV08-01939-SBA
)	
Plaintiffs,)	ORDER
vs.)	[Docket No. 36]
)	
FIRST AMERICAN TITLE COMPANY, a)	
California corporation,)	
)	
Defendant.)	
)	

This matter comes before the Court on Defendant's Motion to Dismiss. [Docket No. 36]. Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing.

For the reasons set forth below, IT IS HEREBY ORDERED that plaintiffs' complaint is dismissed. This dismissal is pursuant to Federal Rule of Civil Procedure 12(b)(1) due to lack of subject matter jurisdiction under 28 U.S.C. § 1257. See Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

In addition, even if plaintiffs met the requirements of subject matter jurisdiction, this action must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a cause of action for "violations of due process law and equal protection rights." Defendant First American, as a private entity, is only subject to suit under the due process or equal protection clauses if it is alleged to have acted under color of state law. Private actions in a civil lawsuit so not constitute requisite "state action." Flagg Bros. v. Brooks, 436 U.S. 149, 164-165 (1978). Moreover, plaintiffs' claims alleging deprivation of constitutional

rights are completely barred by the one-year statute of limitations. Carpinteria Valley Farms, Ltd. v. County of Santa Barbara, 344 F.3d 822 (9th Cir. 2003).

Dated: 10/20/08

By: Saundra B. Armstrong
Honorable Saundra B. Armstrong
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5

6 FRANK W RUPP et al,
7 Plaintiff,

Case Number: CV08-01939 SBA
CERTIFICATE OF SERVICE

8 v.

9 FIRST AMERICAN TITLE COMPANY et
10 al,
11 Defendant.

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
13 District Court, Northern District of California.

14 That on October 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
17 delivery receptacle located in the Clerk's office.

18 Frank W. Rupp
19 439 Butterfield
20 Cathedral City, CA 92234

21 Dated: October 21, 2008

22 Richard W. Wieking, Clerk
23 By: LISA R CLARK, Deputy Clerk
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